

IN THE  
**United States Circuit Court of Appeals**  
NINTH CIRCUIT.

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CATHERINE D. STEAD, et al.,

*Complainants and Appellants,*

VS.

ISABELLA M. CURTIS, et al.,

*Defendants and Appellees.*

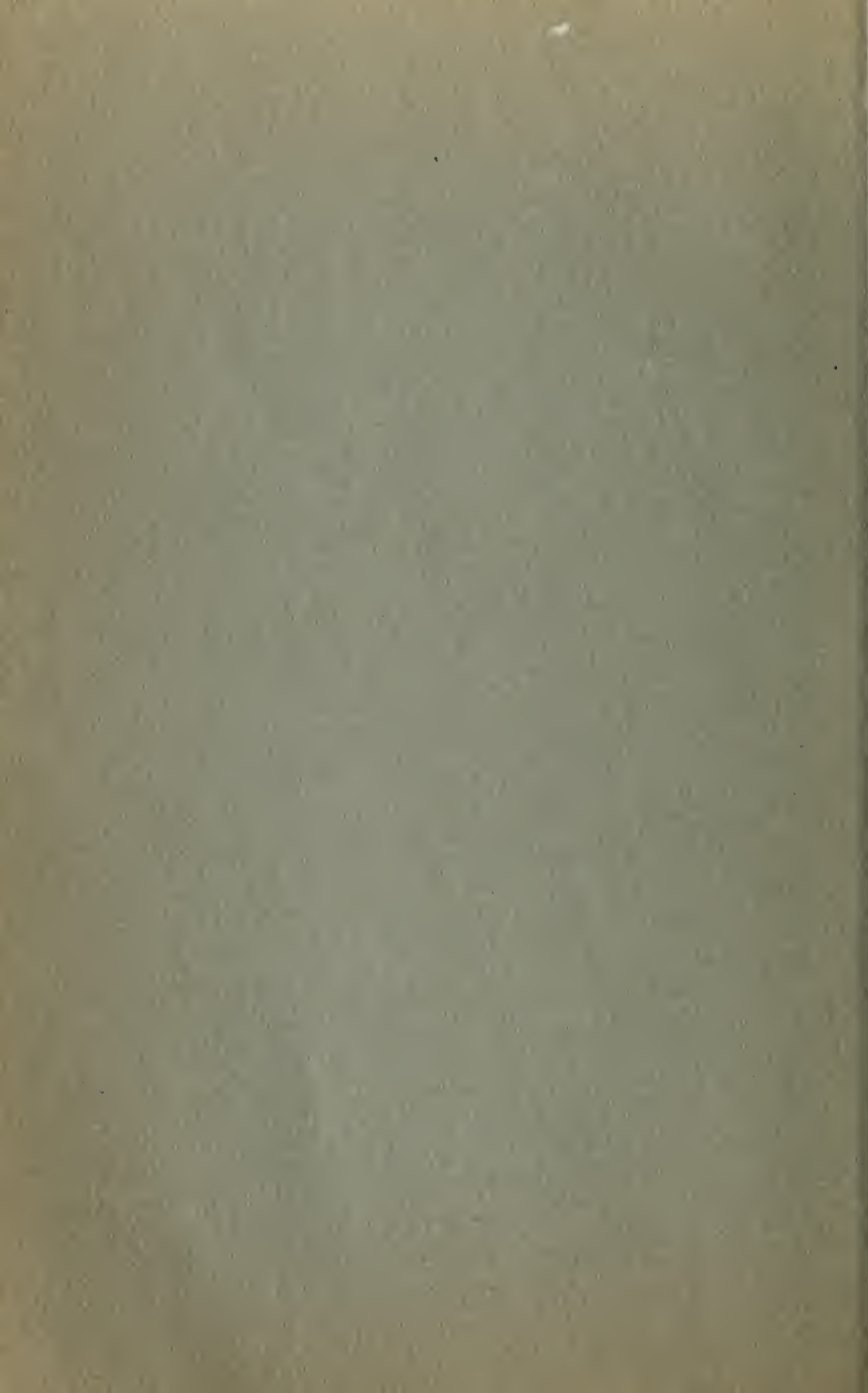
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ANSWER OF JEAN MCGREGOR BOYD,  
GEORGE DAVIS BOYD, AND HENRY  
ST. CLAIR BOYD TO APPELLANTS'  
MOTION TO VACATE ORDER DENY-  
ING PETITION FOR REHEARING.

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JOHN S. PARTRIDGE,  
Solicitor and of Counsel for Jean  
McGregor Boyd, et al., Appellees.

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I.

In this matter, the decision of the Court affirming the action of the Circuit Court, was rendered October 2, 1911. A petition for a rehearing was presented, and denied December 4, 1911. The present "Motion by Appellants to Vacate the Judgment and Order Deny-

ing Appellants' Petition for a Rehearing" was filed August 27, 1912.

There is nowhere, so far as we know, any warrant in the rules, the statutes or decisions warranting any such motion as this. We have always understood that the order of this Court denying a petition for a rehearing was final, unless a *certiorari* was issued by the Supreme Court.

Rule 32 of this Court provides:

"In all cases finally determined in this Court, a mandate or other proper process in the nature of a *procedendo* shall, upon the payment of any costs due in the case, be issued, as of course from this Court, to the court below, for the purpose of informing such court of the proceedings in this Court, so that further proceedings may be had in such court as to law and justice may appertain. Such mandate, if not stayed by the order of the Court, shall be issued on the expiration of thirty days from the date of such final determination unless within said time a petition for rehearing be filed, in which case the mandate shall be stayed until five days after the determination of such petition."

And rule 29 reads as follows:

"A petition for rehearing may be presented within thirty days after judgment. It must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel that in his judgment it is well founded, and that it is not

interposed for delay. Twenty printed copies must be filed with the clerk of this Court."

In *Crabtree v. McCurtain*, 66 Fed. 1, the Court of Appeals for the Eighth Circuit, held that no petition for a reargument should be entertained after the time fixed by the rules for the retention of the mandate, unless the counsel were not informed of the decision, or could not have ascertained, with reasonable diligence, that it had been rendered.

## II.

It is very difficult to follow counsel in the reasons given for a reopening of this case. The first decision of this Court was principally upon the ground that there was no jurisdiction below to entertain the suit. If that was so, then there was no need to consider the other points made. But upon the petition for a rehearing, this Court patiently explains the reasons why an ancient statute relied upon can have no bearing upon the case. The two decisions dispose of every proposition made. And prior to the present litigation, these complainants had persistently exhausted every possible resource in the State courts.

We respectfully submit that there should be an end to this litigation.

JOHN S. PARTRIDGE,  
Solicitor and of Counsel for Jean  
McGregor Boyd, et al.

